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M E M O R A N D U M

TO: Board of Legal Specialization

FROM: Gary Arnold

DATE: January 12, 2006

RE: Response

The Real Estate Law Consulting Group ("Consulting Group") for the California Board of Legal Specialization read and considered the many helpful comments to the proposed standards for the creation of a legal specialization in real estate. The draft standards received many favorable responses, as well as suggested changes and objections. In response, Consulting Group has revised the proposed standards and is asking for additional comments.

The objections raised by members of the Bar centered around 5 primary subject matters described as follows:

- 1) There was a concern that the field of real estate is so broad and diverse that a specialization certification would be meaningless or could be misleading to consumers.
- 2) Many suggested that if a specialization program were to be pursued, it should only cover isolated sub-specialties, such as residential landlord/tenant law, residential or consumer real estate transactions, commercial and industrial real estate, and one or more of the other sub-specialties which the Consulting Group classified as "Designated Practice Areas" (DPA).
- 3) A number of responses questioned whether the minimum number of hours devoted to the practice of real estate is far too low.
- 4) A number of comments suggested both that the amount of continuing legal education classes was too low, as well as too high.
- 5) Some questioned the motivation for establishing the specialty at all, and suggested the proposal was simply a marketing gimmick for either some unidentified group of lawyers or CLE providers.

The Consulting Group addressed virtually all of these comments before submitting the draft standards for public comment. We tried to balance what we saw as the benefits, not only to consumers but also to members of the Bar, in enhancing the practice of real estate law. Ultimately, the Consulting Group concluded that the proposed specialization program is appropriate for the practice of real estate, and would provide significant benefits to members of the Bar and consumers.

In light of the comments, the Consulting Group concluded that the prior requirements of (a) only 2,000 hours of real estate work over a period of 5 years in at least 2 of the DPAs was too

low, and (b) 300 hours in at least 2 separate DPAs was too restrictive, particularly for those practitioners who practice almost exclusively within a single DPA. Accordingly, the Consulting Group has proposed to increase the number of hours to 4,000 hours of real estate practice over a 5-year period, and to eliminate the requirement that any particular number of hours be spent on at least 2 DPAs.

The consulting group further acknowledged that a specialization in “Real Estate” is very broad, and we discussed at length the idea of creating multiple sub-specialties. On balance, we felt that creating multiple sub-specialties would be virtually impossible to implement from an administrative standpoint. In lieu of creating actual sub-specialties, the Consulting Group felt that the broad specialty in real estate was appropriate. Any lawyer holding the specialization certificate could however, advertise himself as having a particular emphasis in a DPA, subject to the current ethical requirements which prevent a lawyer from accepting matters for which he or she is not competent.

With respect to the continuing legal education requirement of the standards, there were comments both ways---the requirements were too stringent or too lax. The Consulting Group felt it had reached a fair balance on the subject and elected to retain the legal education requirement as initially proposed.

The Consulting Group also wished to assure all members of the Bar that there have been no efforts made by any CLE group or any other group of practitioners to influence or create the real estate specialist program. Indeed, the Consulting Group consists of a wide spectrum of lawyers from the state who practice in both rural and urban areas, and represents a cross-section of lawyers from solo practice to small law firms, large law firms and public attorneys.

The Consulting Group believes that the specialization program will increase CLE incentives and may increase CLE offerings for real estate lawyers. The program should enhance opportunities and incentives for lawyers practicing in the real estate field, and foster the professionalism, skill and competence of those members of the Bar who seek the specialization certificate. The specialization certificate program will also provide expanded opportunities to refer matters to other lawyers with different areas of expertise and to experienced real estate practitioners in different geographic areas.

Most important, the Consulting Group concluded that consumers would benefit by having the option of retaining a certified specialist, rather than a general practitioner. The specialization program will help to ensure that lawyers who hold themselves out as real estate specialists will at least have some minimum standards to make the representation. It is also the Consulting Group’s expectations that lawyers who have made the effort and demonstrated their compliance with the standards would be more likely to only accept matters within their area of competence and refer consumers to other specialists, should the need arise.

The Consulting Group wishes to thank all of the members of the Bar who reviewed and commented upon the standards.